

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT GREENVILLE**

**SANDRA F. BABEL, MICHAEL HARVEL,)
SUSAN S. BLAINE, JERRY R. LETTERMAN,)
and CHESTER R. HOLT, Individually, and)
On Behalf of All Others Similarly Situated,)**

Plaintiffs,

v.

**AMERICAN TRAFFIC SOLUTIONS, INC.,)
and the TOWN OF BLUFF CITY,)
TENNESSEE,)**

Defendants.

CIVIL ACTION NO. 12-cv-194

NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT

Defendants, American Traffic Solutions, Inc. (“ATS”) and Town of Bluff City, Tennessee (“Bluff City”), pursuant to 28 U.S.C. §§ 1441 and 1446, gives notice of the removal of this action from the Chancery Court of Washington County, Tennessee to this Court. In support of this removal, the Court would show as follows:

1. Plaintiffs, Sandra F. Babel, Michael Harvel, Susan S. Blaine, Jerry R. Letterman and Chester B. Holt (collectively “Plaintiffs”), commenced this action on behalf of members and others similarly situated on April 4, 2012, by filing a Class Action Complaint (“Complaint”) in the Chancery Court of Washington County, Tennessee. This action is docketed as Civil Action Number 41588 (“the State Court Action”).

2. Plaintiffs served ATS with a summons and copy of the Complaint in the State Court Action on or about April 19, 2012.

3. Plaintiffs served Bluff City with a summons and copy of the Complaint in the State Court Action on April 10, 2012.

4. This Notice of Removal is timely filed pursuant to 28 U.S.C. §1446(b) within thirty (30) days after service of the Summons and Complaint in the State Court Action upon Defendants.

5. Copies of all process and pleadings filed and served on Defendants in the State Court Action are attached hereto as **Exhibit 1**.

6. A copy of the written notice required by 28 U.S.C. §1446(d) to be directed to the Clerk and Master of the Chancery Court of Washington County, Tennessee, is attached hereto as **Exhibit 2**. A copy of the written notice required by 28 U.S.C. §1446(d) to be directed to counsel for Plaintiffs is attached hereto as **Exhibit 3**. Defendants will file and serve these notices upon Plaintiffs' counsel after the filing of this Notice of Removal.

7. According to 28 U.S.C. §1332(d), United States District Courts have original jurisdiction over class action lawsuits where the amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs and where any member of Plaintiffs' class is a citizen of a State different from any Defendant.

8. Plaintiffs' Complaint does not allege a specific amount in controversy. Instead, Plaintiff requests restitution (i.e. fines, costs and fees) to be paid to Plaintiffs and members of the class which they represent. When the amount in controversy is unspecified, the Sixth Circuit has stated that the preponderance standard applies. Hubbard v. Electronic Arts, Inc., Nos. 2:09-CV-233, 2:09-CV-234, 2011 WL 2792048, *6 (E.D. Tenn. Jul. 18, 2011). The preponderance standard requires that the defendant satisfy its burden by proving that the amount in controversy more likely than not exceeds the jurisdictional amount. Healthmart USA, LLC v. Directory

Assistants, Inc., 3:09-0369, 2010 WL 200802, *1 (M.D. Tenn. Jan. 13, 2010); Smith v. Nationwide Prop. & Cas. Ins. Co., 505 F.3d 401, 404-05 (6th Cir.2007).

9. Plaintiffs' Complaint in the State Court Action is substantially similar to the Complaint in Christopher Shannon Cawood and Jonathan Kelly Proffitt v. Bluff City, Mayor Irene Wells, and American Traffic Solutions, Inc., Case Number 2:11-CV-270, attached hereto as **Exhibit 4**. In that case, like the current case, the plaintiffs alleged negligence, fraud, and conspiracy. The class includes all persons who have received a traffic violation by the Bluff City Police Department based on the traffic enforcement cameras. The plaintiffs in that case requested reimbursement of money paid from fines, costs, attorneys' fees, etc. and estimated that the amount of damages equaled \$6,000,000.

10. Because Plaintiffs' claim and the pending Cawood matter contain similar allegations, Defendants can only assume that the amount of damages to be potentially recovered will exceed \$5,000,000.00 as required by the Class Action Fairness Act ("CAFA") since the present case does not specify an amount in controversy.

11. Plaintiffs also allege violations of Article 1 of the Fourteenth Amendment of the United States Constitution invoking federal question jurisdiction pursuant to 28 U.S.C. § 1331.

12. Plaintiffs Babel, Harvel and Blaine are citizens of the State of Tennessee. See Complaint ¶2.

13. Plaintiff Letterman is a citizen of the State of Virginia. See Complaint, ¶2.

14. ATS is a corporation organized under the laws of the State of Kansas with its principal place of business in Tempe, Arizona.

15. The Town of Bluff City, Tennessee is a municipality incorporated in Sullivan County, Tennessee.

16. Accordingly, there exists complete diversity of citizenship between Plaintiffs and Defendants under 28 U.S.C. §1332(d).

17. The Complaint in the State Court Action alleges that Defendants violated the Tennessee Constitution, the Tennessee Consumer Protection Act and engaged in fraud, negligent and intentional misrepresentation, unjust enrichment and civil conspiracy. (Complaint, Ex. 1 to Notice ¶¶6-7).

18. Based on the above-listed causes of action, Plaintiffs seek declaratory and injunctive relief regarding the traffic camera enforcement in Bluff City, Tennessee. Plaintiffs also seek a finding of unjust enrichment along with restitution, including a full refund of fines, costs and fees paid by Plaintiffs. Finally, Plaintiffs seek attorneys' fees and costs.

19. Accordingly, Defendants are entitled to remove the State Court Action to this Court pursuant to 28 U.S.C. §1441(a), because it is a civil action brought in State Court over which this Court has original jurisdiction under 28 U.S.C. §1332(d).

As a result, Defendants hereby removes the State Court Action from the Chancery Court of Washington County, Tennessee, to this Court, and respectfully requests that this Court assume complete jurisdiction over all claims to the exclusion of further proceedings in the State Court.

Respectfully submitted this 9th day of May, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on **May 9, 2012**, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

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